sion of this Court or any other court suggesting that the Just Compensation Clause is implicated when continued entitlement to a government *subsidy* is made contingent on a potential recipient's prior conduct. Cf. *Bowen* v. *Gilliard*, 483 U.S. 587, 604-605 (1987) (explaining that, for purposes of takings analysis, Congress's decision to reduce the level of public-assistance benefits under an existing program raises no greater concern than would Congress's enactment of a new benefit program incorporating equivalent limitations).

Petitioners rely in part on a provision of the 1996 FAIR Act that stated that a quota holder's lease of his "farm poundage quota" would not "result in any reduction in the farm poundage quota for the transferring farm." Pet. 6 (quoting 1996 FAIR Act, § 155(i)(6)(A), 110 Stat. 930); see Pet. 11-12 (discussing similar provisions of prior law). That provision, however, simply stated a rule of law that applied for as long as the FAIR Act remained in effect; it did not purport to guarantee that the law would remain unchanged. See Pet. App. A26 ("Since Congress at all times retains the ability to amend statutes, a power which inheres in its authority to legislate, Congress at all times retains the right to revoke legislatively created entitlements."). Even under the 2002 Act, moreover, petitioners' prior lease arrangements did not have the effect of reducing their future "quotas." Because the 2002 Act eliminated the prior peanut quota system, see 7 U.S.C. 7959 (Supp. III 2003), petitioners (like all other peanut farmers) are currently free to produce and market *unlimited* quantities of peanuts without financial penalty. Because petitioners did not produce peanuts during crop years 1998-2001, they

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under the prior legal regime.

are not eligible for the DP and CCP under the 2002 Act. Petitioners offer no basis, however, for characterizing their ineligibility for those benefits as a reduction in their "quotas."

2. Petitioners contend (Pet. 15-20) that the court of appeals' ruling conflicts with this Court's decision in *Kelo* v. *City of New London*, 125 S. Ct. 2655 (2005). Petitioners do not rely on the Court's *holding* in *Kelo*, which sustained the challenged taking against a Fifth Amendment challenge. See *id.* at 2668. Rather, petitioners invoke the Court's reiteration of the established principle that "the sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B*, even though *A* is paid just compensation." *Id.* at 2661; see Pet. 16. Petitioners' reliance on *Kelo* is misplaced.

To begin with, the Court in *Kelo* addressed an issue quite distinct from the one presented here. The question in *Kelo* was whether an *acknowledged* taking—a local government's exercise of the power of eminent domain—would be unconstitutional despite the government's willingness to pay just compensation. See 125 S. Ct. at 2658. The question in the instant case, by contrast, is whether Congress's modification of the peanut subsidy program effects a compensable taking to begin with. The decision in *Kelo* sheds no meaningful light on that issue.

In any event, the 2002 Act did not "take the property of *A* for the sole purpose of transferring it to another private party *B*." *Kelo*, 125 S. Ct. at 2661. Rather, Congress simply abolished one subsidy program in its entirety and established another in which petitioners are free to participate. In allocating benefits under the new program, Congress determined that eligibility for the

DP and CCP should be restricted to persons who had "share[d] in the risk of producing a crop on a farm" during crop years 1998-2001. 2002 Act § 1301(8), 116 Stat. 166-167 (7 U.S.C. 7951(8) (Supp. III 2003)); see Pet. App. D7. But the fact that the benefits available to former quota lessors are less generous under the new program than under the prior legal regime, while those available to former lessees are more generous, does not mean that a transfer of property has occurred. Cf. *Gilliard*, 483 U.S. at 604 (Congress does not effect a taking when it alters an existing benefit program "to distribute limited resources more fairly"). Nor do the DP and CCP eligibility criteria established by the 2002 Act "raise a suspicion that a private purpose was afoot." *Kelo*, 125 S. Ct. at 2667. It was manifestly reasonable for Congress, in fashioning the new peanut subsidy program, to make certain benefits available only to persons who had produced peanuts during the most recent crop years.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

PAUL D. CLEMENT
Solicitor General
PETER D. KEISLER
Assistant Attorney General
DAVID M. COHEN
JANE W. VANNEMAN
Attorneys

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